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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1263

EASTERN AUTO DISTRIBUTORS, INC.,
A CORPORATION, PETITIONER,

versus

J. WESLEY SNYDER, d/b/a SNYDER'S AUTO SALES,
RESPONDENT

BRIEF OF THE RESPONDENT, J. WESLEY SNYDER, d/b/a SNYDER'S AUTO SALES, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Was the special venue provision of the Automobile Dealer Franchise Act, § 2, 70 Stat. 1125 (1956), 15 U. S. C. § 1222 (1958), correctly construed by the Court below to allow suit in the instant case in the district where the dealership existed?

Although the peculiar issue of venue here involved is one of novel impression under the Automobile Dealers Franchise Act, it is not reasonable to expect that absent a decision by this Court there will be a flood of cases brought in District Courts in districts in which they could not otherwise have been brought. In the case, at least, of the four major American automobile manufacturers it is reasonable to anticipate that other dealers will be maintained in the same district and division as that of a wrongfully cancelled

dealership franchise and that the manufacturer's relations with his remaining franchise outlets will amount to sufficient activity in the forum to meet both jurisdictional and venue requirements. A problem, if there is any problem, would be created only with respect to certain foreign manufacturers and some American truck manufacturers.

There is no public policy which would require a different construction than that placed upon the Act by the Circuit Court. That construction does nothing more than give the plaintiff a right to bring his suit and have it tried in the district where the defendant had committed its violation of the Act and where it had inflicted the injuries forbidden by the Act.

The petitioner in his argument divides the question into three subsidiary questions which are discussed in the same order herein.

(a) While the Circuit Court held that the general venue statute, 28 U. S. C. § 1391(c) should be construed in consonance with and as supplementary to the venue provision of the Automobiles Franchise Act, the Court did not rely exclusively upon the general venue statute as justifying its decision. Rather the Circuit Court in its opinion stated that the demands of the venue statute were amply fulfilled. The Court said: "At the same time they [the Petitioner, Eastern Auto Distributors, Inc.] clearly met the venue specifications of both the Franchise Act and the general statute." (Petitioner's Appendix, page 26.) Since the Circuit Court decided that the venue provisions of the Automobile Dealers Franchise Act standing alone were satisfied, it is unnecessary for the further question of whether it needs to be bolstered in this case by the general venue statute to be considered.

The apparent conflict in decisions of other courts of appeals cited by Petitioner is not a conflict whose resolu-

tion would clarify the particular issue in the instant petition. As the petitioner's argument points out, that apparent conflict would involve an interpretation of the Jones Act, a law entirely unrelated to the Anti-Trust Statutes of which the Automobile Dealers Franchise Act is a part.

(b) The Circuit Court correctly held that the focal time in determining whether venue is proper is the time when the cause of action arose. Any other interpretation of this or any other venue provision would completely change the practical result in every lawsuit. A defendant could in every case choose the forum in which litigation would have to be brought against him by withdrawing immediately upon the commission of any wrong. A "hit and run corporation" could effectively insulate itself from suit in the forum where the wrong occurred by keeping on the move. Not only would all plaintiffs be inconvenienced in having to pursue a withdrawing corporation to its home office, but probably only the very rich would find themselves able to underwrite the cost of a lawsuit in a distant forum. If the law in this respect must be declared, justice requires that it be declared in the same terms as used by the Circuit Court in its opinion.

(c) The Circuit Court did not err in its interpretation of the word "found" in the venue provisions of the Automobile Dealers Franchise Act. It is not by coincidence that this Act uses the identical language of the personal jurisdiction provision of the Sherman-Clayton Act, 15 U. S. C., § 15. The word "found" is correctly given the same meaning as used in that provision as well as the same applied to it under the corporate venue section of the same Act, 15 U. S. C., § 22. *Peoples Tobacco Company v. American Tobacco Company*, 247 U. S. 79 (1918) is not applicable as it construed the Sherman Act prior to the 1914 amendments

of the Clayton Act. The effect of the 1914 amendments as well as the plain intention of Congress in broadening the venue provisions is clearly stated in *United States v. Scophony Corporation*, 333 U. S. 795 (1948):

> Thus, by substituting practical, business conceptions for the previous hair-splitting legal technicalities encrusted upon the "found"-"present"-"carrying-on-business" sequence, the Court [in *Eastman Kodak Company v. Southern Photo Materials Co.*, 273 U. S. 359 (1927)] yielded to and made effective Congress' remedial purpose. Thereby it relieved persons injured through corporate violations of the anti-trust laws from the "often insuperable obstacle" of resorting to distant forums for redress of wrongs done in the places of their business or residence. A foreign corporation no longer could come to a district, perpetrate there the injuries outlawed, and then by retreating or even without retreating to its headquarters defeat or delay the retribution due.

CONCLUSION

The decision of the Court below correctly construed the statutory provisions in question consistent with prior decisions of this Court and with the intention of Congress and as to neither of them is there a conflict from any source. It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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